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No. 73-1266

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# Supreme Court of the United States

OCTOBER TERM 1973

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KENNEBEC LOG DRIVING COMPANY, ET AL., *Petitioners,*

*v.*

UNITED STATES OF AMERICA, *Respondent.*

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## REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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Petitioners have requested the Court to grant a writ of certiorari in this case because the Court of Appeals' decision presents an important question concerning the proper interpretation of the statutory framework created by Congress in the Rivers and Harbors Act of 1899 as amended in 1900, and because the decision below—as the Court of Appeals itself explicitly recognized—has potentially far-reaching significance for those elements of the American timber industry which are heavily dependent upon the transport of logs by water.

In opposing the grant of a writ, the United States does not challenge—and therefore presumably agrees

with—the Court of Appeals' characterization
case as presenting "an important question" a
water transportation throughout the timber i
(App. B. at 8b). Indeed, the Government does
contend that this important issue is inappropr
certiorari review. The Government's principal
tion, which is put forward as a flat conclusion
any real analysis or explanation, is that the de
the Court of Appeals below was correct on th
(Memorandum in Opposition 4). Presumably
ernment's very brief discussion of the latter
intended to suggest that, however important t
may be to the timber industry, the legal issues
are exceedingly simple and that the Court of
resolution of those issues was incontestably c
despite the fact that District Judge Gign
reached a precisely contrary conclusion in an
which the Court of Appeals itself characte
"thoughtful and well-documented" (App. B a

The two opinions below demonstrate that t
portant legal issues are substantially more
than is implied by the Government. Both lowe
agreed that the 1900 amendment of the 1899 Ri
Harbors Act was intended to "legalize" log dr
specified rivers falling within the ambit of th
and Harbors Act. In the words of Distric
Gignoux, who undertook a thorough review of t
lative history of the 1900 Act, Congress at t
"explicitly authorized log drives on rivers, suc
upper Kennebec, where log drives are the p
method of navigation, subject only to regul
the . . . Secretary of the Army" (App. A.
Judge Gignoux then reasoned that, in thus aut

such log drives, Congress could scarcely have assumed or intended that the prohibition contained in Section 13 of the 1899 Rivers and Harbors Act would nevertheless apply to the necessary and inevitable incidents of log driving on the rivers involved, because the illogical result would have been to prohibit, in effect, the very activity which the Congress was seeking to authorize. Accordingly, in order to reach a harmonious interpretation of the statutory framework as a whole, and thus to give meaning and substance to each of its provisions, Judge Gignoux concluded that Congress must have intended the 1900 amendment to supersede whatever applicability Section 13 of the 1899 Act might otherwise have had to log driving on these rivers.

Although the Court of Appeals agreed that the purpose of the 1900 Act was to legalize log driving on such rivers, it disagreed with Judge Gignoux's view of the interaction between the 1900 amendment and Section 13 of the 1899 Act, for reasons which reflect, in petitioners' view, a fundamental misunderstanding of the prohibitory nature and operation of the 1899 Act (see Petition for Certiorari 13-16). But whichever view of the statutory scheme is correct, the legal issues are clearly more complex and far-reaching than the Government suggests by its abbreviated comments on the merits.[1]

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[1] Contrary to the Government's assumption at page 4 of its Memorandum in Opposition, nether Judge Gignoux nor petitioners have suggested that the 1900 amendment "repealed" Section 13 of the 1899 Act. In order to give each provision in the statutory scheme its appropriate scope and substance, Judge Gignoux interpreted Section 13 of the 1899 Act as being of narrower scope than the Government contends, but no question of implied repeal is here involved.

Finally, we feel obliged to call attention to
tant inaccuracy, inadvertent we are sure, in
orandum in Opposition. The Government
"there has as yet been no finding of fact in t
the necessity for the pollution connected wit
drives [*i.e.*, the sinking of occasional log
sloughing off of bits of bark], or on whethe
tioners would suffer the expense, logs could
without such violations of Section 13 of the
Harbors Act" (Memorandum in Opposition
during the proceedings before Judge Gign
District Court, petitioners submitted affida
out challenge or even response by the Gov
which directly addressed that issue, and Judg
then expressly found that "[e]very log drive
the Kennebec log drive, *necessarily* inv
sloughing off of bark into the river and the
logs which have become waterlogged" (Ap
emphasis added). The Government is simpl
in its assertion that "there has as yet been n
fact" on that subject; there has been, and t
ment has never challenged it.

Since this case involves admittedly impo
tions of statutory interpretation regardin
nature and purpose of Section 13 of the
and Harbors Act and the effect of the 1900
of that statute, and since these important a
issues were resolved by the Court of Appeal
manner which appears to be inconsistent
decisions of this Court, the case deserves
certiorari.

## CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

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